

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESAL PRICE
LITIGATION

MDL NO. 1456
CIVIL ACTION NO.
01-12257

THIS DOCUMENT RELATES TO:
ALL CLASS ACTIONS

Judge Patti B. Saris

**JOINT STIPULATION AND PROPOSED ORDER RE: TRACK TWO
DEFENDANTS' ANSWER TO PLAINTIFFS' THIRD AMENDED MASTER
CONSOLIDATED COMPLAINT**

All plaintiffs and all Track Two defendants¹ in the above captioned action, by and through the undersigned counsel, respectfully present the following stipulation and request that the stipulation be entered as an order.

WHEREAS, on October 17, 2005, plaintiffs filed their Third Amended Master Consolidated Complaint (“TAMCC”);

WHEREAS, the TAMCC identifies the plaintiffs’ new proposed representatives for a Medicare Part B beneficiary class with respect to the Track One defendants in response to this Court’s August 16 Memorandum and Order Re: Motion for Class Certification (“August 16 Order”);

WHEREAS, the plaintiffs and Track Two defendants have pending before the Court motions that they anticipate will result in the Court setting a date for plaintiffs to

¹ Pfizer, Inc., Pharmacia Corp., Pharmacia & Upjohn, Inc., Abbott Laboratories, Amgen Inc., Aventis Pharmaceuticals Inc., Aventis Behring, L.L.C., Hoechst Marion Roussel, Inc., B. Braun Medical Inc., Bayer Corporation, Baxter International, Inc., Baxter Healthcare Corp., Dey, Inc., Fujisawa Health Care, Inc., Fujisawa USA, Inc., Immunex Corporation, Novartis Pharmaceuticals Corporation, Sicom, Inc. f/k/a Gensia, Inc., Gensia Sicom Pharmaceuticals, Inc., TAP Pharmaceutical Products, Inc., Together Rx LLC, and Watson Pharmaceuticals, Inc.

amend their complaint to identify their new proposed representatives for a Medicare Part B beneficiary class with respect to the Track Two defendants;

WHEREAS, this stipulation relates only to the Track Two defendants' obligation to answer the TAMCC and is not, and should not be interpreted as, an agreement to stay the Track Two discovery schedule; and

WHEREAS, it is in the interest of efficiency for this Court and the parties if the Track Two Defendants are not required to file answers to the TAMCC at this time;

THEREFORE, the parties stipulate and agree, and respectfully request that this Court enter the parties' proposed order relieving the Track Two defendants of their obligation under Rule 15(a) of the Federal Rules of Civil Procedure to answer the TAMCC at this time. If the Plaintiffs file an amended complaint in the future that identifies their new proposed representatives for a Medicare Part B beneficiary class with respect to the Track Two defendants, the Track Two defendants shall respond to that amended complaint in accordance with the Federal Rules of Civil Procedure.

ON BEHALF OF THE
PLAINTIFFS

/s/ Steve W. Berman

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Dated: October 31, 2005

ON BEHALF OF THE
DEFENDANTS

/s/ Scott A. Stempel

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Dated: October 31, 2005

[PROPOSED] ORDER

IT IS HEREBY ORDERED THAT the Track Two Defendants are relieved of their obligation under Rule 15(a) of the Federal Rules of Civil Procedure to answer the Plaintiffs' Third Amended Consolidated Class Action Complaint. If the Plaintiffs file an amended complaint in the future that identifies their new proposed representatives for a Medicare Part B beneficiary class with respect to the Track Two defendants, the Track Two defendants shall respond to that amended complaint in accordance with the Federal Rules of Civil Procedure and will thereafter have the opportunity to take discovery of any proposed class representatives identified in that complaint in the manner provided by this Court.

Dated: _____

Patti B. Saris
United States District Judge

CERTIFICATE OF SERVICE

I certify that on October 31, 2005, a true and correct copy of the foregoing stipulation and proposed order was served on all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve (Verilaw Technologies) for posting and notification to all parties.

/s/ Mark D. Smith

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